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August 28, 2007

Tom Loranger
Chief, SWRO Water Resources
Dept. of Ecology
PO Box 47775
Olympia, WA 98504-7775

RECEIVED
AUG 29 2007
Washington State
Department of Ecology

Re: Application for Change of Certificate of Water Right No. 207 (Priority date 1926)
Request for priority processing

Dear Mr. Loranger:

This letter is to submit an application for Change of Water Right Certificate No. 207, on behalf of co-applicants John N. Nordstrom and Harmony Hill. Also enclosed are exhibits supporting the application, and a check in the amount of \$50.00 for processing.

Co-applicant Mr. Nordstrom owns the land on Hood Canal to which Water Right Certificate No. 207 is appurtenant. Harmony Hill is a nonprofit organization that leases a portion of Mr. Nordstrom's property for the purpose of conducting health and wellness programs. This application is submitted as part of the ongoing development of the property by Mr. Nordstrom and Harmony Hill, including restoration of water supply that was destroyed by landslides, and approval of the Harmony Hill water system as a Group A water system.

Under separate cover, we are also submitting a "companion" Application for Ground Water Right, for instantaneous quantities only, to meet peak demands.

Overview

Harmony Hill has developed and conducts successful cancer retreats and wellness programs at Mr. Nordstrom's property on Hood Canal. Harmony Hill has constructed substantial new buildings and remodeled existing historic buildings at considerable cost and effort to accommodate its popular and growing programs. Increasing numbers of people are taking part in these successful daytime programs and overnight retreats. See attached *Harmony Hill Timeline* and *Harmony Hill Program Summary, June 2007*. In addition, Mr. Nordstrom reserves a portion of the property for his family's use, and has constructed improvements there.

Harmony Hill operates a water system on the Nordstrom property that serves both Harmony Hill's water needs and the water needs of the Nordstrom family and their guests. As part of ongoing development of programs and capital facilities, Harmony Hill is preparing a water system plan which will be submitted to the Washington State Dept. of Health, to support approval of the water system as a Group A water system.

Application for Change, Water Right Certificate No. 207

Two water right applications are being submitted to the Department of Ecology as part of Harmony Hill's Group A water system plan development. Specifically:

- Mr. Nordstrom and Harmony Hill, as co-applicants, submit the attached Application for Change of Water Right Certificate No. 207, to restore water supply made unavailable by catastrophic landslides, and to authorize withdrawal of groundwater from an existing well and one planned well on the property.
- Under separate cover, Mr. Nordstrom and Harmony Hill are submitting an Application for Water Right, for additional instantaneous quantities only, to meet peak demands during Harmony Hill's popular wellness programs, music programs conducted by Annas Bay Music Festival on site, and busy weekends and vacations at the Nordstrom residence.

The historical background for Certificate of Water Right No. 207, and specific changes requested by the attached application, are discussed in detail below.

Application for Change of Surface Water Right No. 207**Background**

Water Right Certificate No. 207 (Priority date December 13, 1926) is appurtenant to land on Hood Canal near Union, about 1/2 mile east of Alderbrook Inn. I.P. Callison and his family developed the property beginning in the 1920s, at the same time that homes were being built at Sunny Beach next door.

The Sunny Beach water system and the Callison water system were built at the same time; they were almost certainly designed and constructed by the same people. The design and construction characteristics of the two water systems were the same. The associated surface water rights at Sunny Beach and the Callison property also served the same purposes, including in-house domestic use, general outdoor use and irrigation use, as well as aesthetic use in a series of decorative streams, ponds and fountains. The Sunny Beach water right (Water Right Certificate No. 1387) and the Callison water right (Water Right Certificate No. 207) both have priority dates of 1926. The Dept. of Ecology recently approved changes to Sunny Beach Water Right Certificate No. 1387, and authorized a new water right for Sunny Beach (G2-29550). See attached Reports of Examination (ROEs).

The Callison diversion dam was constructed upstream from the Sunny Beach diversion dam on the same stream, Slaslapolis Creek. Slaslapolis Creek is also referred to as Smith Creek in the attached *Updated Evaluation: Hillslope Erosion and Sedimentation, Black Bear Development, Union, Washington, December, 1990*, prepared by Shannon and Wilson.

A comprehensive discussion of water use in the area, and local geologic and hydrologic conditions, is included in the attached Report of Examination (ROE) for Sunny Beach Surface Water Right No. 1387 (PCHB No. 04-155) dated August 19, 2005, and the ROE for Sunny Beach Ground Water Right Permit No. G2-29550 (October 5, 2004). See attached ROEs.

Development by the original owner was diligent, and use of water was continuous.

Beginning in the early 1920s, the Callison family built a large main house on the property in the lodge style popular at that time. The family also built five smaller houses for the use of I.P. Callison's sons, their families, and on-site caretaking staff. Two garages were constructed on the property, along with other outbuildings. Landscaping on the property was intensively developed with lawns, orchards, vegetable gardens, berries, and decorative landscaping. See figures in attached Skillings Connolly report showing irrigated area and schematic drawing of historic surface water system, and Figure 13 of the *Harmony Hill Timeline* (attached), which shows the configuration of the water system on the developed portion of the property.

A well was drilled next to the main house at some point. We have not found a record of well development or a history of the well. Holt Drilling prepared a well log in 2001 in the course of making improvements to the well. See attached well log, Holt Drilling, December 26, 2001. Aspect Consulting also prepared a well log and a description of local wells and hydrogeology, as part of Harmony Hill's planning for water system improvements. See Appendix A in attached *Technical Memorandum, Well Upgrade and Sanitary Control Area Evaluation*, Aspect Consulting, January 18, 2002.

A Water Right Claim (No 740) for the use of groundwater was filed on August 31, 1973, during one of the statutory claim filing periods. See attached Water Right Claim form.

The existing well is next to the main house, at the east end of the water system, and downhill from the main east-west trunk line of the system. Continuous gravity flow-through of surface water entering the water system above the main line would have resulted in substantial pressure differentials in the water system, with higher pressures at the upper end. These pressure gradients would have made it difficult to pump water from the well at the downhill end of the system to other parts of the water system. Given this configuration, it is reasonable to conclude that the well may have been used to supplement the surface water supply when that supply was not sufficient. Surface water use continued at the property until landslides destroyed the surface water system in 1990.

From about 1986 to 1988 the property was on the market. During that time, the property was maintained to show to prospective purchasers, and continued to be used by the owners for vacations, holidays, and weekends.

Plans for development of Harmony Hill were initiated in 1985 and fixed in 1986

In 1985 Gretchen Schodde discovered the future home of Harmony Hill during a retreat at the Episcopal Church property next door. Gretchen had a vision of the health and wellness programs she planned to create, and she took steps immediately to gain access to the property. In 1986, Gretchen became the caretaker at the property, began recruiting board members, established a mission statement for the organization, and started building Harmony Hill's programs. See *Harmony Hill Timeline*.

The Callison family sold the land to the Nordstrom family, and the sale was recorded in 1988. From the beginning, Kitty and Elmer Nordstrom were strong supporters of Harmony Hill's mission and its development. In 1990, they leased a substantial portion of the property to Harmony Hill on a long-term basis to support full buildout of Harmony Hill capital projects and

programs. Ambitious fundraising, organization building, and capital facilities programs were launched by Harmony Hill. These efforts have continued without a pause to the present day. See *Harmony Hill Timeline*.

Harmony Hill has remodeled three of the original buildings on the property and constructed three substantial new buildings and a yurt. The Nordstrom family has also built a new house on the beach to take full advantage of the portion of the property reserved to their use, and to accommodate their extended family and guests.

Catastrophic landslides destroyed the surface water system in 1990

In fall of 1990, a developer cut all of the trees and removed all of the vegetation on the plateau above the Nordstrom property. The developer did not implement any runoff control to manage sheet flow from the large clear-cut area, and heavy winter rains quickly saturated large areas of the exposed land. The steep slopes above Harmony Hill sloughed off huge volumes of mud into the headwaters of the northeast branch of Siaslapolis Creek where the diversion dam and conveyance structures identified in Water Right Certificate No. 207 were located. See attached *Updated Evaluation: Hillslope Erosion and Sedimentation, Black Bear Resort Development*, Shannon and Wilson, Inc., Dec. 1990.

The catastrophic mudslides completely buried and destroyed the surface water infrastructure in the upper canyon. The slides also severely damaged Sunny Beach surface water infrastructure downstream, in the lower canyon. Mason County right of way (Hwy. 106) improvements were damaged, as well as private property at the mouth of the stream near the beach.

After the landslides, the Nordstrom family and their neighbors took immediate steps to address the damage caused by the developer's negligence. In order to assess the damage and determine steps needed to restore the watershed and water infrastructure, the Nordstrom family and other local landowners commissioned studies by Shannon and Wilson and SCA Engineering. See *John N. Nordstrom Property, Harmony Hill Estimated Water Flow Report, June 25, 2007*, Skillings Connolly Consulting Engineers; *Updated Evaluation: Hillslope Erosion and Sedimentation, Black Bear Resort Development, Union, Washington*, Shannon & Wilson, December 1990; and *Black Bear Design Report, November 1997*, SCA Engineering.

The Shannon & Wilson report references a November 28, 1990 report by SCA Engineering that outlined temporary mitigation measures. That report is unavailable; however, according to Shannon & Wilson, it recommended tight-lining surface flow from the upper watershed to control structures below, and improvements to Sunny Beach water system facilities and County right-of-way in the lower watershed. See Shannon and Wilson report, at p. 9. Shannon & Wilson's report recommended additional long-term solutions, including revegetation of the upper watershed and stabilization of the steep canyon slopes by means of subsurface trench drains.

Recommendations provided by the geotechnical and engineering consultants focused on a phased approach - first controlling runoff, so that damage to private property and County roads could be mitigated and future damage avoided; Second, restoring the hydrologic function of the watershed and surface water supply in the lower watershed, where the impacts of uncontrolled flow posed the greatest threat to homes and other improvements.

More flooding and mudslides occurred in 1996. Another engineering study was prepared for the landowners. See *Black Bear Design Report, November 1997*, SCA Engineering, attached.

Pursuant to recommendations in the 1990 and 1997 geotechnical and engineering reports, the Nordstrom family, Mason County and other local landowners took steps to restore the watershed and water infrastructure. The Nordstrom family bought the upland areas that had been clear-cut and replanted them to restore the hydrologic function of the watershed. Water diversion and control facilities were rebuilt in the lower watershed and new facilities added for runoff management and to restore water supply to Sunny Beach.

As part of the reconstruction and improvements to water supply infrastructure, Sunny Beach applied for groundwater rights in 1997. The Dept. of Ecology approved the requested groundwater rights in 2003 (Ground Water Right Permit No. G2-29550). In 1997, Sunny Beach also applied for changes to Water Right Certificate No. 1387 (surface water right). The Dept. of Ecology issued decisions on that change application in 2003. Mr. Nordstrom and the other Sunny Beach landowners appealed the Department's decision (PCHB 04-155). The appeal was settled in 2005.

With the natural hydrology substantially restored, and water right issues settled at Sunny Beach, surface water supply was restored to the Sunny Beach properties.

Having completed the complex and expensive process of restoring the use of water in the lower watershed, Mr. Nordstrom and Harmony Hill turned to their water supply needs at Harmony Hill. Harmony Hill engaged consulting services to evaluate the water system and began making improvements to the existing well and water system infrastructure on the property. Harmony Hill staff also conducted site surveys on at least two occasions to assess the feasibility of restoring the surface water system. The surface water diversion and conveyance structures were not found during those surveys, and it was determined that the reconstruction of the surface water infrastructure was not possible at reasonable cost. Mr. Nordstrom and Harmony Hill agreed instead to pursue changes to the underlying surface water right, so that water could be withdrawn from wells.

Legal actions prevented use of water

The landowner Mr. Nordstrom was a party to two litigation matters directly relating to Slaslapolis Creek that prevented the use of water from that source, pending resolution, as discussed below.

- Mason County Washington v. George Heidgerken, et.ux., Mason County Superior Court Cause No. 90-2-4040-3. In 1990, in an effort to remedy the harm done to their water system and other property, the Nordstrom family and their neighbors joined Mason County in legal action against the developer, who had negligently cleared the land, causing devastating landslides and damage. The lawsuit sought to enjoin the developer from causing more harm to the hydrologic system; sought restoration of the watershed to pre-development hydraulic conditions; sought restoration of water system facilities; and sought damages for destruction of public right-of-way and private property caused by the developer's negligent action. In addition to the fact that water was physically unavailable, pending allocations of liability and responsibility for restoration of water supply, and

work was begun to restore the watershed, water supply from the creek was not available. Following a trial, a final order was issued in the matter in 1993.

- Sunny Beach Water System and John N. Nordstrom v. Dept. of Ecology, PCHB Cause No. 04-155. In 1997, as part of the restoration of water supply facilities in the lower watershed, Sunny Beach applied for changes to Water Right Certificate No. 1387. Ecology issued a decision six years later, in 2003, and Sunny Beach appealed. Mr. Nordstrom owns property at Sunny Beach as well as Harmony Hill, and joined that appeal as a party. In addition to the fact that water continued to be unavailable in the upper watershed, this appeal had a direct bearing on whether further legal action would be required to protect Mr. Nordstrom's interests, and whether to redevelop water resources in the upper watershed. In short, it would not have been prudent to proceed with Harmony Hill water supply development without having resolved this matter. A final order was entered in 2005, clearing the way for Harmony Hill and Mr. Nordstrom to consider redevelopment of the upper watershed.

Harmony Hill has diligently pursued a fixed plan of development.

Harmony Hill has developed cancer retreats and wellness programs, and constructed buildings and other facilities to support those programs, diligently and continuously, since 1985, when Gretchen Schodde was inspired to create an organization and develop beneficial health and wellness programs. She secured the use of the Harmony Hill property in 1986 and began putting together a nonprofit organization. At that point, her plan was certainly conclusively fixed and determined. She and the organization have never looked back. Harmony Hill has diligently pursued funding, construction of capital improvements, and program development continuously since 1985. See *Harmony Hill Program Summary* and *Harmony Hill Timeline*.

Recently, Annas Bay Music Festival has also established a contractual relationship with Harmony Hill to present musical recitals and performances at the site. The musical events are being held in 10 of the 12 months this year. In the future, events will be held monthly. A variety of conferences and retreats are accommodated at Harmony Hill, such as a retreat this summer by staff from the Office of the Attorney General.

Since Gretchen Schodde moved to the site and set out to realize the Harmony Hill vision, the landowners have made the land and appurtenant water resources fully available to bring the project into being. The Nordstrom family has generously supported Harmony Hill's mission since its inception. As an example of the Nordstrom family's commitment to Harmony Hill's mission, in 1990 the Nordstrom family granted a low-cost long-term lease to Harmony Hill. The lease, and other generous support provided by the Nordstrom family, have made it possible for Harmony Hill to make long-term commitments to other funders and develop substantial programs and facilities that would not otherwise have been possible.

An example of the Nordstrom family's commitment to Harmony Hill with respect to water was the joint water right application for use of groundwater from Harmony Hill's well, submitted in 1990 by co-applicants Kitty Nordstrom and Harmony Hill. The Dept. of Ecology issued Certificate of Ground Water Right No. G2-27827 to co-applicants Kitty Nordstrom and Harmony Hill in 1992. The certificate authorizes use of 1.16 aft. and 25 gpm from the existing well. The co-applicants submitted this application to support Harmony Hill's start-up needs, over

and above vested quantities under Water Right Certificate No. 207 and other vested rights authorizing the Nordstrom family's use of water.

Certificate of Ground Water Right No. G2-27827 served the start-up needs of the Harmony Hill project. It does not affect vested property interests held by the Nordstrom family, nor does it address the need for additional water rights that Harmony Hill is experiencing as its programs grow. See attached *Harmony Hill Water System Water Rights Self-Assessment for Projected Water Right(s) Status*.

At the present time, reconstruction of downstream Sunny Beach water facilities is complete and Sunny Beach water supply has been restored. Having attempted to locate upstream surface water facilities, Mr. Nordstrom and Harmony Hill have determined that upstream water infrastructure cannot be restored at reasonable cost. Mr. Nordstrom and Sunny Beach have agreed to pursue changes to Water Right Certificate No. 207 and to make improvements to wells and infrastructure as necessary to restore beneficial use of water under this water right, so that Harmony Hill can fully realize its mission consistent with Gretchen Schodde's original vision. The attached Application for Change is submitted to support Harmony Hill's full development, and continued use and enjoyment of the property by the Nordstrom family and their guests.

Changes to this water right will support the water needs of Harmony Hill and the Nordstrom family

Harmony Hill's programs have been very successful. New partners are bringing their own energy and support to Harmony Hill's programs. Alderbrook Inn, located nearby, is now an active partner in Harmony Hill's expanding programs. Music programs presented by Annas Bay Music Festival at Harmony Hill are gaining national attention. Recently Ann Lovejoy, a well-known Northwest garden expert, joined the Board, and there is an interest in restoring the historic gardens at the property. Restoration of the garden will include restoring the decorative streams, ponds and fountains that were an integral part of the original design to working order. These water features are of historical interest because they represent a unique local landscape design style, and because a member of the Skokomish Indian tribe built these and other local water features, including extensive artistic rockwork, in the 1920s.

The attached application is submitted as part of the planning process for Group A water system approval, which is part of overall project development. Projected water demands as shown in the attached water right self-assessment are 6.94 aft for consumptive use, and 67.22 aft for nonconsumptive aesthetic use and irrigation return flows. Maximum instantaneous pumping is projected to be 200 gpm. See *Harmony Hill Water Rights Self-Assessment* forms.

In addition to applying for water rights, Harmony Hill and John Nordstrom are taking additional steps to develop water system capacity, including negotiating a lease amendment clarifying ownership and operation of the water system; evaluating the feasibility of additional improvements to the existing well; considering development of a second well; and recording a covenant to protect the source of groundwater supply. Harmony Hill is drafting a water system plan, and looking into securing the services of a satellite water system operator.

John Nordstrom and Harmony Hill request changes to surface water rights

John Nordstrom and Harmony Hill request the following changes:

- **Change of purpose:** "Domestic" to "indoor domestic use, outdoor general water use, irrigation of lawns and gardens, and aesthetic use." These uses are historic vested uses. This requested change will simply bring the language of the Certificate into alignment with current use designations.
- **Change of point of diversion/withdrawal:** "Slaslapolis Creek" to "withdrawal from two wells, one existing and one planned."

Vested quantities under existing water rights and projected future demands

Water Right Certificate No. 207 (1926). The historic use of water under Water Right Certificate No. 207 has been analyzed by Skillings Connolly, Inc., using a water system model that was prepared for Sunny Beach Water System. See *John N. Nordstrom Property, Harmony Hill Estimated Water Flow Report*, Skillings Connolly, June 25, 2007. Site-specific information for Harmony Hill was integrated into the model and was used to calculate historic water use. The results are presented in the attached document. The report finds that 45 gallons per minute and 73 acre-feet are vested by use under Water Right Certificate No. 207.

Certificate of Ground Water Right No. G2-27827 (1990). This water right was issued in 1992 pursuant to an application by co-applicants Kitty Nordstrom and Harmony Hill. The certificate authorizes use of 1.16 aft. and 25 gpm from the existing well for Harmony Hill startup.

Claim Number 740 (filed 1973). We do not know when this well was developed. If it was developed before the effective date of the groundwater code in 1945, water use may be authorized under this claim. If the well was developed after that date, use of water from the well is authorized under the exempt well provisions of RCW 90.44.050.

The water needs of the site were served by a combination of sources, which cannot be identified with certainty.

Projected annual use for consumptive use is 6.94 aft. Projected annual use for nonconsumptive use is 67.22 aft. See attached *Water Right Self-Assessment* forms.

With respect to instantaneous quantities, Harmony Hill will require a maximum pumping rate of 200 gallons per minute (gpm) to meet peak demands. Ground Water Right No. G2-27827 currently authorizes pumping at 25 gpm.

By the attached application, Mr. Nordstrom and Harmony Hill request changes to instantaneous quantities (45 gpm) as well as changes to annual quantities under this water right.

Adding the instantaneous quantity authorized under Certificate No 207 (45 gpm) to the 25 gallons per minute authorized under Water Right G2-27827 will provide regulatory authorization of pumping at a rate of 70 gpm. Harmony Hill's well has pumped 96 gpm during peak periods (see *Water Rights Self Assessment*), so it is clear that this instantaneous quantity can be accommodated. Because other water users are cross-gradient and the well will be withdrawing

water that would otherwise be discharged to marine waters, no other water users or right holders should be affected.

The balance of instantaneous quantities needed to meet peak demands (130 gpm) are requested by the "companion" Application for Water Rights (instantaneous quantities only), submitted under separate cover.

Reasons justifying periods of nonuse

The discussion above provides the background of surface water use to the present day, including periods of nonuse.

Three statutory reasons excusing nonuse are applicable here: unavailability of water, operation of legal proceedings, and determined future development, which are discussed below.

- Unavailability of water, 1990-present

Unavailability of water is sufficient cause excusing nonuse under RCW 90.14.140 (1)(a). Mudslides in 1990 and 1996 completely buried the surface water diversion and conveyance facilities at the Nordstrom/Harmony Hill property. Huge volumes of mud made surface water completely unavailable in the upper watershed. Sunny Beach water facilities and water rights were restored as a first priority following the slides. Following completion of that work, physical surveys of the upper watershed clearly showed that surface water infrastructure there had been totally destroyed, and that restoration of water infrastructure in the upper watershed would not be feasible at reasonable cost.

In Pacific Land Partners, LLC v. Ecology, PCHB No. 02-037, the Pollution Control Hearings Board held that, where reasonably priced and readily available systems are available to remedy a problem (in that case, siltation commonly experienced in the area), a water right holder may not argue unavailability excusing nonuse. In contrast, the destruction of the Nordstrom surface water diversion involved not mere "siltation," but a catastrophic event that buried the entire upper watershed, including surface water diversion facilities and conveyance pipes, under an *estimated 8,000 cubic yards of mud*. See *Updated Evaluation*, p. 3.

Not only are there no "reasonably priced and readily available systems" to restore the use of surface water in this case; in fact, there is not even reasonably priced and readily available *access* to the site. The old access road is currently impassable due to forest regrowth and damage from slides. A new diversion dam would have to be built. Trenches would have to be dug. A large amount of new pipe would have to be laid almost 4,000 feet, over rough terrain—at substantial cost. In these circumstances, it is clear that water from the old surface water source is completely unavailable.

- Operation of legal proceedings, 1990-1993 and 2004-2005

Operation of legal proceedings in two cases justifies nonuse of water, under RCW 90.14.140(1)(d).

Mason County Superior Court Cause No. 90-2-4040-3. Litigation was pending during the period 1990-1993 directly involving the destruction of local surface water hydrology, the destruction of water supply diversion and conveyance facilities, and

the unavailability of water from Slaslapolis Creek. As part of the litigation, local hydrology was evaluated, damage to local hydrology assessed, damage to water works and other property was evaluated; determinations were made as to the cause of the damage; liability for harm was allocated; and court orders were issued by Mason County Court with respect to findings of fault and responsibility for restoration of water facilities and Slaslapolis Creek hydrology. That watershed was the source of supply for both Sunny Beach and Callison surface water systems. Until responsibility for restoration of local hydrology was determined and reconstruction of water facilities was initiated pursuant to court order, other projects to restore use of water in the watershed could not proceed.

PCHB No. 04-155. In 1997, as part of its restoration of water supply, Sunny Beach applied for changes to Water Right Certificate No. 1387. A decision was issued by Ecology in 2003, and appealed by Sunny Beach. The appeal directly related to use of water in the creek and water rights in the watershed. Until legal rights to the water in the lower watershed were settled, use of water in the upper watershed could not be restored. Resolution of this matter opened the door to a determination as to whether to proceed with development of supplies at Harmony Hill. When that appeal was settled in 2005, Mr. Nordstrom and Harmony Hill turned their attention to restoring water supply at Harmony Hill, including possible restoration of upstream surface water facilities. Once they determined that surface water use was infeasible, they agreed to pursue changes to Water Right Certificate No. 207 to authorize withdrawal of water at wells.

- Determined future development: 1985-present

A determined future development justifies nonuse under RCW 90.14.140(2)(c). In 1985, Gretchen Schodde, the founder of Harmony Hill, established a plan. She took affirmative steps to secure the property, and started her project in 1986. In 1986, the plan was clearly fixed, firm and definite, as Gretchen built her organization, developed a program mission, and planned capital improvements and programs. Since that time, Gretchen, her board, staff, and countless volunteers have worked hard to make the original vision a reality, building programs and capital improvements.

Since Gretchen gained access to use of the land, the landowner has taken steps to insure that Harmony Hill enjoys full use of the land and appurtenant water as needed to support program development. Mrs. Nordstrom's 1990 application for water rights as co-applicant with Harmony Hill is an example of that support. The application attached to this letter, and its companion application for instantaneous quantities, are further examples of the cooperation and support of the owner of the water rights, and the owner making water available to support Harmony Hill's projects.

Case law is clear that what is required is a fixed and determined plan beginning within 5 years of the last beneficial use, and continuing diligent efforts toward project development. By that measure, Harmony Hill would have had to fix its plan by the end of 1995 and work diligently after that time to put the project in place, which they certainly have done. The circumstances of a particular case will be controlling as to whether the development has been prosecuted with diligence. R.D. Merrill v. PCHB, 137 Wn.2d 118, 969 P.2d 458 (1999). Harmony Hill is a nonprofit organization, and limited staff and resources have been available to accomplish its work. Despite these

challenges, Gretchen Schodde and her organization have made impressive strides in a relatively short time towards implementing their plan. These results have been achieved by determination, hard work, continuous diligent effort and sheer willpower. See attached *Harmony Hill Timeline*.

With respect to water, Harmony Hill has also accomplished much, including evaluation of groundwater wells, assessment of needed water system improvements, design and construction of improvements to the well and water system, acquisition of groundwater rights to support project start-up, site survey for assessment of the surface water system restoration, and development of the attached water right application. Currently Mr. Nordstrom and Harmony Hill are working on lease amendments to clarify water system operation and ownership, , and a covenant to insure protection of the well. A draft water system plan is being prepared by Harmony Hill.

The requested changes are in the public interest

Approval of changes to Water Right Certificate No. 207 will support Harmony Hill's expanding cancer programs and other wellness programs, including enhanced overnight facilities for cancer patients and their loved ones. The water right changes will also support the full use and enjoyment of the property by Mr. Nordstrom, his family and guests.

Approval of the requested changes will ensure that no future diversions take place in the upper watershed, and that base flows will remain in Slaslapolis Creek throughout the year. In addition to Mr. Nordstrom's replanting and restoration of the upper watershed, this change will insure continuing flow of cool, fresh water to Hood Canal throughout the critical summer months.

Changes to these water rights will also allow for restoration of water features in the garden, enhancing the therapeutic environment for cancer patients and their families. The garden water features are also of historic and aesthetic value, unique to the area and constructed in part by a member of the Skokomish Tribe.

Summary of request for changes to Water Right Certificate No. 207

In summary, co-applicants John N. Nordstrom and Harmony Hill request change of purpose of use and change of point of diversion/withdrawal for Water Right Certificate No. 207, which has been vested by use and is appurtenant to property owned by Mr. Nordstrom. Following continued beneficial use by the Callison family, Harmony Hill diligently pursued development of its programs and capital facilities beginning with a project vision in 1985. Water use at startup was under Water Right Certificate No. G2-27827C.

Surface water has been unavailable to Harmony Hill and Mr. Nordstrom's family under Water Right Certificate No. 207 since mudslides destroyed water diversion facilities in the upper watershed in 1990. As part of the ongoing restoration of the watershed and water supplies destroyed by the slides, Mr. Nordstrom and Harmony Hill request changes to Water Right Certificate No 207. These changes will support Harmony Hill's expanding health and wellness programs, and the Nordstrom family's continuing use and enjoyment of the property.

Design and construction of water works, geology, hydrology, and use of water are the same as at Sunny Beach next door. See Sunny Beach ROEs. Additional site-specific information is provided in the report by Aspect Consulting and other reports attached to this application..

Under separate cover, Mr. Nordstrom and Harmony Hill are submitting a "companion" Application for Water Rights, for instantaneous quantities only, in the amount of 130 gallons per minute. These additional quantities are needed to meet peak demands for Harmony Hill's expanding programs and the use of the property by Mr. Nordstrom's family and guests. The additional instantaneous quantities will be withdrawn from the existing well and one additional well to be drilled in the future.

These applications are submitted as part of the Group A water system planning process for the Harmony Hill water system.

Request for expedited processing

Due to the rapid expansion of Harmony Hill's beneficial programs and increasing use of the property by Mr. Nordstrom's extended family, Mr. Nordstrom and Harmony Hill request expedited processing of these applications. Expedited processing is justified in this case for the following reasons:

- The co-applicants are not requesting additional annual quantities.
- The transfer of surface water rights to groundwater will have environmental benefits, by insuring that surface water is not diverted at this location in the future, and retaining base flows in the local stream year-round.
- Ecology staff has recent experience with, and knowledge of, the hydrology, geology, hydrogeology, and the water system at Sunny Beach next door. That information is applicable and can be used to prepare Reports of Examination for this application and the companion application for instantaneous quantities. Using the knowledge gained by staff in recent decision-making processes is cost-effective and efficient, and consistent with Ecology policy and practice.

Thank you for your consideration of these applications. We look forward to Ecology's approval of changes to Water Right Certificate No. 207 and approval of new instantaneous quantities pursuant to our separate application. These approvals will support the continuing beneficial use of water at Mr. Nordstrom's property by Harmony Hill and Mr. Nordstrom's family.

Very truly yours,



Kathleen Callison

KC:hbs

Encl: Application for Ground Water Right (Instantaneous quantities only)
Check No. 5464 (\$50.00 processing fee)

Exhibits

1. John N. Nordstrom Property Vicinity Map
2. Survey for John N. Nordstrom, Agate Land Surveying, April 2005
3. Legal Description, Place of Use
4. Certificate of Surface Water Right No. 207 (1926)
5. *John N. Nordstrom Property, Harmony Hill Estimated Water Flow Report, June 25, 2007*, Skillings Connolly Consulting Engineers
6. Harmony Hill Program Summary, June 2007
7. Harmony Hill Timeline (2007)
8. Site Plan with well location, 2020 Engineering, September 2002
9. *Technical Memorandum, Well Upgrade and Sanitary Control Area Evaluation*, January 18, 2002, Aspect Consulting
10. Harmony Hill well log, Holt Drilling, December 26, 2001
11. *Black Bear Design Report*, November 1997, SCA Engineering
12. Updated Evaluation: *Hillslope Erosion and Sedimentation, Black Bear Resort Development, Union, Washington*, Shannon & Wilson, December 1990
13. Certificate of Groundwater Water Right No. G2-27827 (1990)
14. Water Right Claim No. 740 (Sept. 4, 1973)
15. Water Right Self Assessment Forms
16. Harmony Hill reports and brochures
17. Sunny Beach ROE, Surface Water Right No. 1387, August 19, 2005 and Sunny Beach ROE, Groundwater Right No. G2-29550, October 5, 2004 (double-sided pocket in exhibits notebook).

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